

§ 1786.84

7 CFR Ch. XVII (1–1–97 Edition)

must be submitted to the appropriate Area Director not less than 30 business days prior to the projected settlement date for the Refunding Loan and shall be on such forms as RUS may prescribe. The application shall provide among other matters the following:

- (1) Borrower's RUS designation.
 - (2) Borrower's name and address.
 - (3) A certified copy of a resolution of the board of directors of the borrower that: (i) Requests RUS approval of the prepayment and (ii) recognizes that the request results in the borrower being ineligible for additional financial assistance under the RE Act.
 - (4) Listing of each RUS Note, RTB Note or FFB Note or other RUS guaranteed note to be prepaid by loan designation, RUS account number, advance date, maturity date, original amount, and outstanding balance.
 - (5) Evidence that the borrower meets or will be able to meet the qualification provisions of § 1786.80(a) of these regulations including that the borrower has the ability to obtain the financing necessary to prepay its outstanding RUS Notes, RTB Notes, FFB Notes and other RUS guaranteed notes within one year of the prepayment of the first FFB Loan.
 - (6) In the event the borrower proposes to utilize a Refunding Loan with a Guarantee in connection with the FFB prepayment, a proposal for the Refunding Loan from a Lender selected by the borrower.
 - (7) Evidence of the Private Lender's qualifications.
 - (8) Servicing entity's name and address.
 - (9) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or State law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.
 - (10) Estimate of Fees and expenses, including any taxes.
 - (11) Description of the area served by the borrower.
- (b) *Notifications.* If a borrower's application has been approved, the Administrator will promptly notify the borrower, the Private Lender and FFB to that effect. If not approved the Admin-

istrator will promptly notify the borrower.

[52 FR 2395, Jan. 22, 1987, as amended at 53 FR 37733, Sept. 28, 1988. Redesignated at 55 FR 49250, Nov. 27, 1990]

§ 1786.84 Future eligibility under the RE Act.

With respect to borrowers which prepay FFB Loans pursuant to this subpart additional loans, loan guarantees and other financial assistance under the RE Act shall be restricted as follows:

(a) *Electric borrowers.* In the case of an electric borrower prepaying under this subpart, after the date of prepayment, no loans, loan guarantees or other financial assistance shall be provided pursuant to the RE Act to the borrower or its successors or for the purpose of financing the construction or operation of generating plants or bulk transmission lines for the purpose of furnishing electric energy in the area served on a retail or wholesale basis by such borrower.

(b) *Telephone borrowers.* In the case of a telephone borrower prepaying under this subpart, after the date of prepayment, no loans, loan guarantees or other financial assistance shall be provided pursuant to the RE Act to the borrower or its successors or for the purpose of furnishing or improving telephone service in the area served by such borrower.

(c) *Service area.* For the purposes of this subpart, the borrower's "Service Area" shall be as determined by the Administrator based upon data as of December 31, of the year preceding the date of prepayment. In determining the Service Area of electric borrowers, the Administrator shall make allowances and adjustments to avoid adversely affecting the eligibility of other borrowers for financial assistance under the RE Act where such borrowers are currently providing electric supply services for retail loads in the same area and which are reasonably expected to continue providing electric supply services for retail loads in such areas.

(d) *Other borrowers.* In the event that the borrower prepaying under this subpart shall be suing a majority of its generating capacity to directly serve its retail consumers, other borrowers

which are purchasing power from such borrower as of September 20, 1986, shall continue to remain eligible for financing under the RE Act for needs in their service area.

(e) *Project participation.* Nothing in this subpart shall prohibit a borrower which has prepaid pursuant to this subpart from participating in generation and transmission projects with borrowers which have not prepaid, so long as the borrower which has prepaid utilizes private capital financing without financial assistance under the RE Act.

(f) *Short-term power purchases.* Nothing in this subpart shall prohibit short-term power purchases by borrowers which have prepaid under this section from borrowers which have not prepaid.

(g) *Lien accommodations.* The Administrator shall consider on a case-by-case basis requests by a borrower which has prepaid under section 311 of the RE Act for an accommodation of the lien of the Mortgage on a *pari passu* basis, to provide security for a lender who provides the borrower with a loan for the purposes of financing electric or telephone facilities within the borrower's Service Area or for other corporate purposes.

§ 1786.85 Settlement procedure.

(a) *Settlement date.* When RUS is satisfied with the documentation, the parties will schedule a settlement date. The Refunding Loan will be settled and the Guarantee delivered on a date and time mutually agreed upon among the parties not earlier than ten business days after receipt by RUS of all final documentation. RUS reserves the right to limit the aggregate dollar amount of and/or the number of prepayments or settlements that take place on any given day.

(b) *Place of settlement.* All settlements involving the Guarantee of Refunding Loans will take place in Washington, DC, at a location of the borrower's choosing.

(c) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to RUS through the Department of the Treasury account at the Federal Reserve Bank of New York in

an amount sufficient to pay the outstanding principal of FFB Loans plus accrued interest from the last payment date to and including the settlement date. In the event the borrower has more than one FFB Loan, all such loans must be prepaid at the same settlement.

(d) *Prepayment of RUS Notes and RTB Notes.* In the event that the borrower chooses not to prepay all its outstanding RUS Notes and RTB Notes simultaneously with the prepayment of the FFB Loans, the borrower shall execute:

(1) An agreement specifying that such RUS Notes and RTB Notes will be prepaid within one year of the settlement date and

(2) A note payable to RUS in an amount equal to the premiums that would have been due under the FFB Notes being prepaid if the FFB Notes had been prepaid in accordance with their terms rather than pursuant to this subpart. This note shall (i) bear interest at a rate equal to the rate on the FFB Notes, (ii) be secured in a manner satisfactory to the Administrator, (iii) be payable on demand one year after the settlement date in the event that the borrower does not prepay all its outstanding RUS Notes, RTB Notes and other RUS guaranteed notes within one year of the date it prepays its FFB Notes, and (iv) be cancelled and returned to the borrower if the borrower's RUS Notes, RTB Notes and other RUS guaranteed notes are prepaid within one year of the date it prepays its FFB Notes.

(e) *Documentation.* The documentation to be delivered at settlement will be agreed upon by the Private Lender, the borrower and RUS. Depending upon the circumstances, RUS may require the borrower to perform a search of title, provide additional title insurance and take such other actions as may be necessary to ensure that the interests of the Government are adequately protected.

§ 1786.86 Other prepayments.

Nothing shall prohibit a borrower from making prepayments of FFB Loans, RUS loans, RTB loans, or other RUS guaranteed loans in accordance with the terms thereof.